

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT B. SMITH and DEPARTMENT OF DEFENSE,
DEFENSE DISTRIBUTION CENTER AP, New Cumberland, PA

*Docket No. 00-1913; Submitted on the Record;
Issued June 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant had more than a 12 percent binaural (both ears) loss of hearing, for which he received a schedule award.

On February 15, 2000 the Office of Workers' Compensation Programs accepted appellant's claim for occupational illness for hearing loss in both ears.

In a CA-1332 form, which the Office received February 10, 2000, Dr. Gregory Garth, a Board-certified otolaryngologist and Office referral physician, indicated that appellant had high frequency neurosensory hearing loss secondary to noise exposure and tinnitus. An audiogram of January 27, 2000 accompanied Dr. Garth's report, indicating testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) and revealed in the right ear losses of 20, 25, 30 and 55 decibels (dBs) respectively; and in the left ear losses of 20, 25, 35 and 60 dBs respectively.

On February 25, 2000 the Office medical adviser applied the Office's standardized procedures to the January 27, 2000 audiogram obtained by Dr. Garth, and determined that appellant suffered from a 11.88 or 12 percent binaural hearing loss. A hearing aid was authorized.

On April 21, 2000 the Office granted appellant a schedule award for a 12 percent binaural loss of hearing. The period of the award ran from January 27 to July 13, 2000.

The Board finds that appellant had no more than a 12 percent binaural loss of hearing for which he received a schedule award.

The Federal Employees' Compensation Act schedule award provisions set forth the number of weeks of compensation to be paid for permanent loss of use of the members of the body that are listed in the schedule.¹ The Act, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a

¹ 5 U.S.C. § 8107.

determination is a matter, which rests, in the sound discretion of the Office.² However, as a matter of administrative practice, the Board has stated: “For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.”³

The Office evaluates permanent hearing loss in accordance with the standards contained in the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993),⁴ using the frequencies of 500, 1,000, 2,000 and 3,000 Hz. The losses at each frequency are added up and averaged. Then a “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five and then added to the greater loss and the total is divided by six, to arrive at the amount of the binaural hearing loss.

In the present case, the district medical adviser determined that appellant had a 11.88 or 12 percent binaural hearing loss based on the audiogram of record dated January 27, 2000. In his report, the district medical adviser determined that the frequency levels recorded at 500, 1,000, 2000 and 3,000 Hz for the right ear, 20, 25, 30 and 55 respectively, totaled 130 dBs which divided by 4 yielded the average hearing loss at those frequencies of 32.50 dBs. He reduced the average 32.50 dBs by 25 dBs to equal 7.50, which he multiplied by the established factor of 1.5 to compute a 11.25 monaural loss in the right ear. The district medical adviser totaled the decibel losses at the above-mentioned frequencies for the left ear, 20, 25, 35 and 60 dBs respectively, at 140 and divided by 4 to obtain the average hearing loss at those frequencies of 35 dBs. He reduced 35 decibels by the 25 decibels “fence” to equal 10, which he multiplied by the established factor of 1.5 to compute a monaural loss in the left ear of 15 dBs. The district medical adviser then took the lesser of the two monaural losses, *i.e.*, the 11.25 loss in the right ear and multiplied it by the established figure of 5 and added it to the 15 dB loss in the left ear and divided this figure by 6 to arrive at a 11.88 or 12 percent binaural hearing loss. The Board finds that the district medical adviser applied the proper standards to the January 27, 2000 audiogram results and properly determined that appellant had a 12 percent binaural hearing loss, which is no more than the 12 percent binaural hearing loss for which the Office awarded the schedule award. Appellant has not submitted any evidence to the contrary.

Appellant contended that he has ringing in his ears, a condition he raised in his initial claim. However, the Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing.

The A.M.A., *Guides* also allows for an award for tinnitus under disturbances of vestibular function.⁵ The Board notes that, although Dr. Garth diagnosed bilateral tinnitus, there

² *Richard Larry Enders*, 48 ECAB 184, 185-86 (1996).

³ *Id.*

⁴ 20 C.F.R. § 10.404.

⁵ See A.M.A., *Guides*, page 146.

is no medical evidence that tinnitus caused or contributed to a ratable hearing loss. Additionally, since no objective findings of disequilibrium or evidence that appellant cannot perform his usual activities of daily living were presented,⁶ appellant has not made a case for an award for tinnitus which causes disturbances of vestibular function.

Appellant would be entitled to compensation if it were established that his tinnitus resulted in a loss of wage-earning capacity.⁷ However, there is no indication in the record that appellant sustained a loss of wage-earning capacity as a result of his tinnitus.

Because appellant has not demonstrated that his tinnitus caused or contributed to a ratable hearing loss other than that for which he has already been compensated, and because appellant has not established that his tinnitus has caused vestibular function disturbances or a loss of wage-earning capacity, there is no basis for paying appellant a schedule award for tinnitus.

The Board notes that if at some later date a medical examination indicates that appellant's condition has worsened, a claim for an amended schedule award can be made to cover any additional impairment.⁸

The decision of the Office of Workers' Compensation Programs dated April 21, 2000 is affirmed.

Dated, Washington, DC
June 7, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ Although the record reflects that appellant's hearing condition has an effect on his daily life, there is no evidence that appellant cannot function in his daily life.

⁷ *Charles H. Potter*, 39 ECAB 645 (1988).

⁸ *Michael C. Norman*, 42 ECAB 768 (1991).